

OFFICE OF THE STATE PUBLIC DEFENDER



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February 25, 2010

Mr. David Ewer, Budget Director
Office of Budget and Program Planning
P.O. Box 200802
Helena, MT 59620-0802

RE: Request to Transfer General Fund from FY 2012 to FY 2011

Dear Mr. Ewer:

This letter is written to request that the Office of the State Public Defender (OPD) be authorized to transfer up to \$1 million in general fund from FY 2011 to FY 2010 to cover expenditures that are expected to exceed our authorized appropriation.

As you are aware, as we prepared for the 2009 legislative session we believed that the target for OPD contained within the Governor's budget would not fully cover all of the expenditures necessary to handle estimated caseload growth; however, we committed to look for ways to reorganize and reduce expenditures to operate within that target. During the 2011 biennium budget process an additional 3% vacancy savings requirement and an across the board 2% cut in general fund further reduced our funding by \$800,000.

Following the 2009 legislative session we reviewed, at a high level, our planned expenditures for FY 2010 and compared the results to our approved appropriation. After this review, we became concerned that estimated expenditures for our current payroll and planned hires to cover increased caseloads, plus planned operating costs, would not allow us to live within the final appropriation. The appropriation for FY 2010 was set at \$19,979,036 while FY 2009 expenditures totaled \$20,500,922. If we operated during FY 2010 at the same level as in FY 2009, we would already be short by over \$500,000.

During our meeting with your office in May, 2009 we indicated that we believed that we were at least \$1.2 million short for FY 2010. (Once again, at least \$800,000 of this shortfall came from the additional vacancy requirement plus the 2% general fund reduction.) At the end of December, 2009 we believed that our shortfall had been reduced to about \$1 million. However, we have not yet factored into our estimates the impact of SB 263. As you know, our fiscal note was not funded and it is still too early to determine if the legislation will generate more funding or create an additional shortfall. In addition,

when the FY 2009 books and records closed, we identified a 7% increase in new cases coming into our system which is on top of the 4% increase experienced during FY 2008.

During our May meeting we committed to put together a plan that would seek to mitigate our funding shortfall. To date the agency has taken the following actions:

- a. We met with OBPP in May, 2008 and January, 2010 to discuss our shortfall.
- b. We met with the Judiciary in June to discuss certain mitigation items that if implemented may affect the Judiciary's operations.
- c. We met twice with union leaders in June and July to ask them to provide us with ideas to mitigate our estimated shortfall. They submitted about a dozen ideas that we are currently assessing but did not advance a "temporary furlough" as an avenue to create savings. The general belief was that if furloughs were implemented our clients' legal needs would not be met in a timely manner given the current and projected caseloads. Any furlough of union members must be approved by that membership.
- d. We met with regional managers in June and July to discuss the estimated shortfall and solicit ideas for mitigation. They and their staff submitted many ideas, some of which were duplicated among regions. We continue to assess these ideas to see which ones we can implement that will create current or future cost savings.
- e. We met with the Montana Public Defender Commission at the end of July to brief them on this issue, and again in October and December, 2009 and in February, 2010.
- f. We gave all regional and central office managers targeted amounts to cut from operating budgets. The operating budget is set at \$20.9 million which is \$900,000 over our general fund appropriation of \$20 million. Please be aware that this budget has aggressive targets.
- g. We met with ITSD regarding our services and discussed ways to reduce our costs.
- h. We met with the Department of Transportation regarding new DUI courts that were not part of our funding request and asked them to consider funding our activities related to these courts. They subsequently declined to provide funding.

Our plan has four major ways to mitigate our estimated shortfall:

- a. Increase funding sources:
Some examples are:
 1. We received a \$62,360 grant from MBCC to fund our records management efforts. However, this amount may span two fiscal years. Also this funding will only offset a decision package that was not approved by OBPP during the last budget process.
 2. We are exploring ways to bill our legal services for guardianship cases.
 3. We are monitoring collections related to SB 263 to see if they are increasing from pre-SB 263 amounts. To date the amount of increase is not significant. We needed to hire a person to account for, track, and report on receivable transactions which will deplete any inflows from this source of funding.
- b. Reduce expenditures:
Some examples are:
 1. We developed a "Major Crimes Unit" which will focus internal staff on cases that require the most resources.

2. We reorganized certain central office functions to do more with less and redirected FTE to work current caseloads.
 3. We delayed the replacement of some computers, servers, copiers, etc. This action will require some significant decision packages for the next biennium to replace this equipment.
 4. We have explored reducing our training efforts.
- c. Increase productivity:
- Some examples are:
1. We have asked all FTE do more, moving cases from contractors to staff attorneys. This also reduces the ability to implement a temporary furlough.
- d. Reduce services:
1. Our Chief is now a member of the Courts of Limited Jurisdiction Commission and has asked this body to approve that certain lesser crimes not receive jail time as we serve only those that face jail time.
 2. We continue to explore ways to develop parameters that limit our involvement in certain cases.

We will continue to explore areas to reduce our expenditure levels during this fiscal year and next in order to attempt to live within our 2011 biennium combined appropriations.

Sincerely,

Harry J. Freebourn
Administrative Director